

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

Thomas Burr,

Plaintiff,

v.

Mark Perkins, et al.,

Defendants.

Case No. 2:04-cv-00786

JUDGE GRAHAM

**ORDER**

On August 20, 2004, Thomas Burr ("plaintiff") filed suit against Mark Perkins ("Perkins"), Travis Tharp ("Tharp"), and the City of Mount Vernon ("Mount Vernon"). Defendants Perkins and Tharp are Mount Vernon police officers. Plaintiff's complaint alleges numerous federal and state law violations stemming from plaintiff's arrest during the early morning hours of May 16, 2004. Plaintiff alleges that defendants violated his constitutional rights under the 4<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments as made applicable under 42 U.S.C. §1983 by falsely arresting, using unreasonable force against, and maliciously prosecuting plaintiff. Plaintiff also alleges that defendants Perkins and Tharp conspired to deny plaintiff equal protection of the law under 42 U.S.C. §1985. Pendant state law claims include assault and battery, intentional infliction of emotional distress, false imprisonment, intentional or negligent defamation, and violations of the Ohio Constitution. Lastly, plaintiff seeks to recover punitive damages from Mount Vernon as defendants' acts resulted from the customs and policies of the Mount Vernon police department.

All defendants moved for judgment on the pleadings with

respect to the 8<sup>th</sup> and 14<sup>th</sup> amendment claims, negligent defamation claims, and Ohio Constitution claims. Mount Vernon also moved for judgment on all the pendant state law claims and on plaintiff claim for punitive damages.

In plaintiff's response, filed on December 29, 2005 (document 26), he acknowledges that the following claims should be dismissed: The 8<sup>th</sup> and 14<sup>th</sup> amendment claims against all defendants, the conspiracy claim under 42 U.S.C. §1985 against Perkins and Tharp, the state constitutional claim against all defendants, the negligent defamation claim against all defendants, all pendent state law claims against Mount Vernon, and the punitive damages claim against Mount Vernon.

Pursuant to plaintiff's express abandonment of the above-mentioned claims, they are hereby dismissed. This matter shall continue with respect to plaintiff's 4<sup>th</sup> amendment claims against all defendants and pendant state law claims of assault and battery, intentional infliction of emotional distress, and false imprisonment against defendants Perkins and Tharp.

It is so ORDERED.

s/James L. Graham

JAMES L. GRAHAM

United States District Judge

DATE: February 3, 2006